MAYOR HALL.

ANOTHER DAY OF LEGAL CONTROVERSY.

Protracted Argument For and Against the Admissibility of Evidence.

IMPORTANT RULING BY THE COURT

At the opening yesterday of the Court of General Sessions, held in the General Term room of the Common Pleas, Chief Justice Daly presiding, all the counsel engaged in the case of the People against Mayor Hall were in prompt attendance. The proceedings, notwithstanding that the whole session was consumed in legal arguments, were of an important character, the principal question at issue being the admissibility of the Garvey warrant for the payment of $400,000 as evidence. Judge Daly gave an important ruling, sustaining the views of counsel for the prosecution on this point. Subsequently a series of objections were submitted by defendant's counsel, all of which Judge Daly said were not technical but proper legal objections, affecting very materially the whole case.

OPENING ARGUMENT.

Mr. Burrill, in referring to the production of the warrant as evidence by the prosecution, stated the objections of the defence thereto; that the introduction of secondary evidence was not admissible in criminal cases except where the paper was in the possession of the defendant and he refused to produce it, or where he had destroyed the paper, or where the paper had been in the care, custody or possession of the party against whom the charge was made.

The Court—I understand the rule to be much broader than that, and I would like to have it fully argued. My impressions are the other way; but I will not make a decision at present. In Greenleaf, vol. III., sec. 107, I find the following:—"If the writing said to be forged is in existence and accessible it must be produced at the trial; but its absence, if it be proved to be in the prisoner's possession, or to have been destroyed by him, or otherwise destroyed, without the fault of the prosecution, is no legal bar to proceedings in the trial, though it may increase the difficulty of proving the crime." That language seems to me clear; but I shall be glad to hear argument on the question.

Mr. Burrill deprecated, at the outset, the plea that this was a technical objection on the part of defendant. No one would suffer more than he by the loss of the original papers in question. Mr. Burrill then again stated his former ground of objection. If His Honor looked through the authorities referred to in the elementary books he would find in each case that one of the three suppositions he had made were proved. As an example Mr Burrill instanced the case of The People vs. Holbrook, 13 Johnson, in the State of New York, and 2 Mason, 464. In the latter case there was an indictment of forgery, and the Judge stated that the evidence warranted the supposition that the paper had been fraudulently destroyed by the defendant. Counsel had consulted many gentlemen in criminal practice in regard to this question, and the invariable doctrine laid down was that which he had stated as the ground of his objection.

The Court—So far as my own memory goes I can recall no case except such as you have cited. But the proposition in the elementary books is broader than that. Suppose, in a case of forgery, the District Attorney's office is burned down, where the forged instrument is, and it is thus destroyed fortuitously, without any instrumentality on the part of the prosecution or of the accused. That illustrates the proposition as laid down in Greenleaf, and the question is whether in that case the prosecution could establish the existence of the document, its destruction and the effect that it would have by secondary evidence. That puts the proposition as I understand it.

Mr. Burrill introduced the case of a witness' death.

The Court—There is a broad distinction between the two cases. The paper was evidence itself, but the evidence of a witness depended on the manner in which it was given and many other circumstances.

Mr. Burrill then argued the question at great length, referring to a number of cases, in all of which the facts were as he stated them. Judge Daly referred to each case as it was cited, and conceded the fact that they were as stated.

The Court—I think you must remember the change now made in the law, and that the defendant is now allowed to give testimony in his own behalf. I do not give any opinion about that, but that is a matter which ought to be taken into consideration, as affecting the stringency or laxity of practice in receiving testimony.

Mr. Burrill—Suppose a man is indicted for forgery. Your Honor says the defendant may testify as to the fact. But suppose he does not go on the stand. The law says that he shall not be prejudiced by that failure to give evidence. And suppose a defendant were to go on the stand in a case of a counterfeit note, what can he say? The note is not there. He cannot say that it had Mr. Smith's signature, and that he saw him sign. Mr. Smith says he never signed it. Where are you then? The very fact must be determined by the inspection of the document, and the defendant is authorized to have that question tried by the jury upon other evidence than that of a man who may be inspired by personal malice or interest.

Mr. Buckley followed in support of the objection. This paper, said he, if it were to be regarded as a whole, or these papers, if they were to be regarded as separated in distinct parts, having never been in the possession of the Mayor, and not lost by his fault, and confessedly in the possession of another party, their contents could not be proved by parole.

A recess was then taken.

Counsel, on resuming his argument, said he confessed he was not an adept in criminal law, and would not be engaged in this case but from strong personal convictions and from strong personal friendship for the defendant. He had made diligent researches into the laws of this State to obtain, if possible, a case analagous to this, bearing on the admissibility of secondary evidence, but had been unsuccessful, save in the case found in the thirteenth of Johnson. He called the attention of the Court to the opinion given in that case, where a principle exactly the reverse of that attempted to be sustained by the prosecution here was up hill. From motives of public policy, where a person is charged, as in this case, and where the supposition is that the instrument is in the hands of the defendant, then it is presumed that the defendant himself, from his possession of the instrument, is thereby enabled to refute the charge and to establish his innocence. It is from that presumed, that having the opportunity of proving guilt or innocence, and he neglects to do it, then his action shall be regarded of that character which enables him to defy the law, and the prosecution shall supply parole evidence for the non-production of the instrument. Counsel then referred to the case of the State of Massachusetts against Snell. In that case the Supreme Court of Massachusetts admitted parole evidence—not because that the prosecution, under fortuitous circumstances, was deprived of the opportunity of presenting, not better evidence, but as a punishment on the defendant for the obvious reason that the defendant had entered into a corrupt and improper agreement with his brother to make away with the lost instrument. The text of that case shows that the note was secreted by the procurement and with the connivance of the defendant for his protection. The defence in this case has the right to have conceded to it that the rule here to be followed must be made a parallel case with the Massachusetts one. And need I say here, in this crowded court room, that nobody has ever charged, and there lives not the man who can be found to charge, directly or indirectly, the Mayor with the disappearance of these papers? If the defendant could have foreseen that these papers might have been stolen and destroyed he would have had a triple guard placed over them, so as to secure their appearance here for his justification. There lives not a man—at all events no man has as yet made his appearance on that stand—who can speak or will undertake to speak as to the contents of the identical claim which forms the subject of the indictment, or who will furnish to the jury evidence as to the elements of what that claim was composed, or who will state the component part of the papers which accompanied that claim—whether it was properly audited, as we say, or improperly audited, as they say. For this reason, and in accordance with the authorities which he had quoted, he contended that the parole evidence attempted to be put forward was inadmissible.

RULING BY THE COURT.

Judge Daly, in ruling on the objections, said:—My attention is called to the case of the People vs. Holbrook, in the thirteenth of Johnson, because it is a familiar opinion, written with the concurrence of the entire Court and not published in the name of any one of the Judges. My attention is called particularly to this observation by the Court. The reasoning employed applies with equal force to an indictment for stealing an instrument, as it supposes it to be, in the hands of the defendant, and he is apprised by the indictment to produce it to falsify the record against him. At the time this case was decided—the People vs. Holbrook—the Chief Justice of the Supreme Court of this State was the same Judge who afterwards pronounced the opinion which has been read to the Court in the sixth Peters—Chief Justice Thompson. So far, therefore, he is responsible as a member of the Court for this particular opinion. It is to be taken in connection with his subsequent judgment upon a point more precisely presented in the Court of the United States, after he was elevated to that position, and where the case came upon appeal. The Court which tried the case having divided upon the point, the case should be determined with accuracy and ease—with that accuracy and ease which is always essential on the part of a tribunal in a criminal case involving either life or liberty, Chief Justice Thompson, the Advocate Judge of the Supreme Court of the United States, in the case of the United States vs. Reyburn, really in terms so precise and comprehensive that I am relieved of the necessity of adding any reasoning of my own or adding anything further than employing his language, and to state that the case in which that language was pronounced was not, in my judgment, so strong a case for the application of the rule as the case now before the Court, and I will, therefore, simply content myself with pointing out the distinction between the two cases. (The Court pointed out the relations of the two cases and continued.) There was but one opinion delivered by the Court, and as that related to the precise point, I must infer, in the absence of any dissenting opinion and the general judgment given, that it received the approbation of all the members of the Court, and of all who heard the argument Chief Justice Thompson states the rule. Having referred to the objection, which was, that the document itself should have been produced or resort should have been had to the government of Buenos Ayres to obtain it or an authenticated copy of it, or that the master of the vessel should be produced upon a subpœna and give evidence of it, the Court used the general language:—"We think the exception in this respect not well founded, but that the case falls within the rule, that when the non-production of the written instrument is satisfactorily accounted for secondary evidence of its contents may be shown. This is a general rule of evidence, applicable alike to criminal and civil cases, and there can be no reason why it should not apply to a case like the present." That rule was subsequently extended. I simply apply it to this case by saying that there is nothing in it which would justify me in inferring that the primary evidence, the documentary evidence, is withheld by the prosecution, and that they have it in their power to produce it. On the contrary, the evidence adduced to the Court has been to the effect that these papers were stolen from the public records, warranting the conclusion upon the part of the Court that they were lost, or destroyed sufficiently for the purpose of entitling either party to give parole evidence of their contents. In my judgment the case of the United States vs. Reyburn disposes of

THE WHOLE QUESTION,

and relieves me of the necessity of giving any particular reasons of my own for the rule here stated. My impression at the outset was that the rule was as comprehensive as I have subsequently found it stated in the elementary writings. It has now been sanctioned by what I consider the authority of an adjudged case by the highest tribunal in the land, and we must accept that authority as final.

Mr. Burrill then rose and took exception to the ruling of the Court as delivered. The exception was allowed and noted.

Counsel then made the further objection

TO THE ADMISSIBILITY OF THE WARRANT

"that it did not pretend to prove the existence of any liability which it was the duty of the Commissioners of Audit to entertain."

Counsel for the prosecution intimated the wish that the defence should present all its objections *seriatim* and at once.

The Court suggested that that would be the proper course, and that counsel should illustrate the grounds of objection to each as succinctly as possible.

Mr. Burrill presented his

THIRD OBJECTION.

That the warrant did not pretend to prove that the defendant did not audit the claim; but, on the contrary, it tends to prove that he did audit it, and that such is the legal presumption from the face of that document.

FOURTH OBJECTION.

That if it be offered to prove the evidence of a liability which it was the duty of the defendant to audit it is not admissible, because the indictment contains no allegation in either count as to the claim mentioned in it, or if it was a liability which came within the jurisdiction of the defendant under the fourth section of the act.

OBJECTIONS TO THE WARRANT AS PRIMARY EVIDENCE.

Mr. Burrill presented the following objections:—First, that no evidence had been offered to prove the existence of the facts which necessarily preceded the warrant—to wit, the presentation of the claim and the jurisdiction and action of the Board of Audit; that the warrant is not evidence to prove the payment alleged in either count of the indictment, because the payment is wholly immaterial and forms no part of the offence of not auditing, or neglecting to audit, and for the additional reason that there is no allegation in either count of the indictment that the claim was paid upon that warrant, or that it was not a just and honest claim against the county of New York; and for the further reason that the allegation of payment and the false certificate, as alleged, are not allegations of nonfeasance, but are charges of malfeasance, which would not be admissible as evidence under the indictment, which merely charges an omission of duty; and for the further reason, which is applicable to both counts, that the indictment does not charge specifically the facts and circumstances constituting the specific offence, nor shows in what particulars the defendant neglected his duties. The indictment charges generally that the defendant wilfully neglected to audit, &c.; and further, that the indictment contains no allegations on which the warrant is admissible as evidence. And,

LASTLY,

that no evidence for the prosecution whatever is legally admissible under the indictment.

Mr. Burrill, in presenting these objections to the Court, said that they were not technical objections, but such only as appeared to counsel for the defence eminently proper and strictly legal.

Judge Daly, in reply, said that he fully appreciated the weight and importance of the objections, but as it was now too late for counsel to enter upon his illustration of them he would adjourn the Court.

The Court then adjourned till eleven o'clock this morning.

DEPARTMENT OF PUBLIC INSTRUCTION.

The Commissioners of the Department of Public Instruction met yesterday in stated session at four o'clock, Commissioner Smyth in the chair, and seven Commissioners present.

A communication was received from the Mayor appointing Richard Knabe Trustee of Public Schools.

Communications were received from the Trustees of several wards relating to the absence of teachers, repairing and furnishing of school premises, &c.

A communication was received from the Trustees of the Seventh ward asking for provision for the pensioning of superannuated teachers in the ward.

A communication was received from the Trustees of the Eighth ward nominating Jane S. Hill as Principal of the Female Department of Grammar School No. 20.

The Trustees of the Seventeenth ward protested against the action of a committee of the Board of Education in the case of Miss Lily Swayne, Miss Swayne having been removed from one position to another, and having appealed to the Board.

A communication was received from the Trustees of the Nineteenth ward asking for $12,000 to furnish a new school building in the ward.

A communication from Comptroller Green showed that of the apportionment to the Board, $938,700, $180,000 had been paid, and requested that as great economy as possible should be used in the action of the Board.

The Finance Committee presented various reports concerning local expenses.

A lengthy communication was received from the principals of the smaller schools in the city, protesting against the law which makes the teacher's salary dependent upon the number of pupils in his school. This communication took the ground that the principals of small schools are not responsible for the number of pupils, and that their work is increased instead of being lessened by such small numbers. This communication was referred to the Committee on Bylaws and ordered to be printed in full in the minutes.

It was resolved that the new school building in East Fifty-seventh street, near Second avenue, in the Nineteenth ward, should be known as Grammar School No. 59.

A resolution was adopted providing that the members of the Board be present at the laying of the corner stone of the new Normal College, corner Fourth avenue and Sixty-eighth street, on Friday, March 19.

The committee appointed to revise the bylaws reported the work completed, and desired the President of the Board to appoint a day when the revision could be discussed and acted upon.

Charles H. Balch was appointed Vice Principal of the Male Department of Grammar School No. 19.

The Committee on Sites and New Buildings requested permission to purchase the lot of ground adjoining Grammar School No. 23 for the use of that school, at the price of $20,000.

The request of the Trustees of the Tenth ward that Alexander Morehouse should be removed from his position as teacher in the ward was refused by a unanimous vote of the Board.

A resolution was introduced and laid over to the effect that Miss Lily Swayne be sustained in her protest against the Trustees and restored to her former position.

THE HERALD'S HISTORY OF THE LOWERY GANG.

233 WEST EIGHTEENTH STREET,
NEW YORK, March 6, 1872.

TO THE EDITOR OF THE HERALD:—

The history of Henry Berry Lowery and his band of swamp outlaws, as told by your correspondent, is as interesting as any of the romances of Dickens or Carleton, those great delineators of English and Irish life. Even in any of the novels of the immortal Sir Walter we look in vain for stronger pictures. There is an air of romance so charming in this truthful narrative of the Southern outlaws, their exploits and their crimes, that its publication in pamphlet form could not but be hailed with delight by every intelligent reader. It would be a scrap of American history worthy of handing down to posterity. What say the Historical Society?

Your obedient servant, CARROL O'DALY.

A CURE FOR CANCER.

TO THE EDITOR OF THE HERALD:—

In 1870, while engaged in the South Pacific Coast Survey, I learned that the natives cured cancer and scrofulous diseases by applying to the part affected the gum of the plant known as the fiery flower (fœtus), which can be had at any druggists. Since coming home I have made practical tests on several persons, among them J. R. Edmondson, of Hickory, Pa. All of them were cured within ten weeks without pain. I give this to the press for the sake of suffering humanity.

FEBRUARY, 23 1872.

THE COURTS.

Interesting Proceedings in the New York and Brooklyn Courts.

Charge of Selling Bad Books and Pictures—Assault on a Sailor—The Cuban Insurrection—A Nolle Prosequi Entered in the Case of General Ryan—Alleged Official Corruption—Writ of Habeas Corpus—A Divorce Suit—Action for Damages Against Wreckers—"When the Band Begins to Play"—An Action for Warranty — Decisions—Business in the Court of General Sessions.

UNITED STATES CIRCUIT COURT.

Charge of Dealing in Obscene Literature.

Before Judge Benedict.

Yesterday Judge Benedict sat in the United States Circuit Court and proceeded to dispose of cases on the criminal calendar.

Patrick J. Bannon was indicted and put on his trial for dealing in obscene books and prints, and sending the same through the Post Office. Defendant had occupied a shop in Ann street, where he sold books; and it was alleged by the prosecution that this was a mere blind to the disgraceful and vile traffic in which the accused was concerned; that he used to send out circulars in reference to the filthy wares he had to sell, and that he even made it a point to cause those circulars to be introduced to public schools and into different parts of the country. Mr. Gaylor, Special Agent of the Post Office Department, was examined on the part of the government. He testified that a knowledge of the business conducted by Bannon having been obtained by him he sent a letter, dated at a place in New Jersey, to Bannon, requesting a specimen of his goods. This letter led to disclosures which resulted in the arrest of Bannon and the seizure of his store of bad books and immoral pictures, some of which were exhibited in Court. The jury found the prisoner guilty, and Judge Benedict sentenced him to a fine of $500 and imprisonment for one year, or until the fine is paid.

Charge of Stabbing on the High Seas.

John Arwo, a Chinaman, who had been found guilty at a previous term of the Court on an indictment charging him with having stabbed Sidney Baldwin, a seaman, on board the ship Thomas Owen, was brought up for sentence. In consequence of some legal questions having been raised in reference to the defendant as to whether he was tried in the proper district or not, his detention in prison has been considerably prolonged. Judge Benedict, believing that the man had been already sufficiently punished by a lengthy imprisonment, ordered him to be discharged, which was accordingly done.

The Insurrection in Cuba—The Indictment Against General Ryan Abandoned.

For a long time an indictment has been pending in the United States Circuit Court against General W. O. Ryan, charging him with a violation of the neutrality laws of 1818, by having, as alleged, set on foot, or assisted in the setting on foot, in this country, an armed expedition, the object of which was to invade the island of Cuba, and there assist in pulling down the power and authority of Spain, a nation with which the United States are at peace. District Attorney Davis has made, as in the case of General Jordan, efforts to bring the indictment to trial, but without avail, as the persons who gave the information upon which it was supposed the government could obtain a conviction cannot be found and are not forthcoming in response to the subpœnas which had been issued to them. The District Attorney stated to the Court that in view of all the facts the only course left to him was to abandon the indictment in the same way that he had to abandon the case against General Jordan, against whom no witnesses appeared. He therefore consented to enter a *nolle prosequi* on the indictment against General Ryan, who was accordingly discharged.

Charges of Official Corruption Against Public Officers.

In his recent charge to the Grand Jury of the United States Circuit Court Judge Blatchford called their special attention to the laws of Congress which applied to the punishment of officials and public servants who receive bribes, and suggested that it was possible some such cases might be brought under their consideration. It is understood that, apart from the action of the Grand Jury, none of these cases will be brought to trial until after the committee now investigating the alleged frauds in the Customs of this city have presented their report to Congress.

UNITED STATES DISTRICT COURT.

Enlistment in the Navy—A Habeas Corpus Case.

Before Judge Blatchford.

Yesterday we published the facts in relation to the case of Bertram C. Green, who had enlisted in the United States Navy, and whose discharge therefrom was sought for in a petition on a writ of habeas corpus sued out by his father, on the ground that the young man was under age and had not sworn that he was of age. The matter has been heard by Judge Blatchford, whose decision is that Green be discharged from the navy on returning $20, which he had obtained as advance, and some clothing, the property of the government. The allegations made by the petitioner are supported by the facts as laid before the Court.

SUPREME COURT—TRIAL TERM—PART I.

Suit for Damages Against Wreckers.

Before Judge Barrett.

John H. Doty vs. John H. Baxter et al.—In November, 1869, the vessel Lina Dennison, belonging to the plaintiff and loaded with coal, sunk in the North River, near Robbin's Reef. The defendants, who are wreckers, were employed to raise her, $500 being the contract price. As claimed by the plaintiff, the vessel was partially raised and then left for another job, meantime the vessel drifting into deep water and sinking, after which the job was abandoned. Suit was brought to recover the value of the vessel. The defence was that the contract was conditional, the sum of $500 to be paid them if successful, and otherwise nothing. Considerable evidence was taken, occupying three days. The Court ordered a sealed verdict.

Decision.

By Judge Van Brunt.

Hildreth vs. Shepherd—Order settled. Engrossed copy to be presented for entry.

SUPREME COURT—CHAMBERS.

Wholesale Charge Against a Husband, with Wholesale Denial on His Part.

Before Judge Ingraham.

Emeline E. Wood vs. William C. Wood—The plaintiff seeks to be divorced from the defendant on the ground of alleged cruel treatment. According to her affidavit they were married in this city in 1840 and their matrimonial life passed on very smoothly until some three years ago, when, as she charges, he entered on a systematic course of brutal and inhuman treatment of her; in addition to profanity and vulgarity, she charges him with throwing books and other missiles at her, including the bones of a duck at dinner one day; locking her out of their room once for a week, consorting with a lewd woman, cheating her out of money belonging to her and threatening to blow her brains out with a pistol. In fact she has been, as she avers, in such dread of her life that she has been obliged to hide knives, scissors, shears, razors and the like, capable of being converted into weapons of murderous assault, from his sight. All these charges the defendant emphatically denies, and attributes them to the plaintiff being, as he avers, a woman of extreme jealous disposition and possessing an ungovernable temper. The case came up on an application for counsel fee. The Court denied the motion, with leave to renew on other affidavits.

Decisions.

Bain vs. Brown—Motion granted.

Harris et al. vs. Benning.—Motion denied; costs to abide event.

Perkins vs. Griffin.—Motion denied and $10 costs.

National Citizen's Bank of New York vs. Bardent.—Motion granted.

Collins vs. Fusch.—Motion denied and $10 costs.

Cornell vs. Maddock.—Motion granted on defendant giving the usual stipulation.

In the Matter of the Application of Margaret McIntosh.—Referred to William Mitchell.

By Judge Barrett.

McHenry vs. Hazzard.—Order settled.

SUPERIOR COURT—SPECIAL TERM.

Decisions.

By Judge Sedgwick.

Anderson vs. Babcock.—Motion denied, without costs, and without prejudice to an application under section 317, Code.

Danure vs. Allen.—Motion granted.

Coleman vs. Beard et al.—Same.

Sanger vs. Murray.—Motion denied, without costs.

By Judge McCunn.

Johnston vs. Renet.—Motion for new trial denied. See memorandum in papers.

COURT OF COMMON PLEAS—PART 2.

The Suit Against the Church of the Disciples—A Disagreement of the Jury.

The case in which James Woods sought to recover $1,471 75, principal and interest, on a bond issued to him by the Church of the Disciples of Christ, the jury which had been instructed to bring in a sealed verdict, disagreed, and were discharged yesterday morning. They stood eleven for plaintiff and one for the defendant. The case is to be retried next Wednesday.

COURT OF COMMON PLEAS—SPECIAL TERM.

"When the Band Begins to Play."

Before Judge Robinson.

Wall vs. Pond et al.—This case, the particulars of which have already appeared in the HERALD, again came up for argument yesterday, when the question turned chiefly upon the right of an owner of literary property to maintain an injunction when it had been copyrighted in the United States Court. Mr. Edwin James argued the case for the plaintiff, contending that the owner of literary property, before it had been published, had a clear right to maintain an injunction in the Courts, notwithstanding it had been subsequently copyrighted in the federal Courts. Messrs. Hill and Bangs contended that the effect of the Copyright law was to make it public, and that the rights of the owner of literary property were thus lost. The Court reserved its decision.

MARINE COURT—PART I.

An Action of Warranty.

Before Judge Gross.

Louis C. Gillespie vs. John C. Ham.—In the summer of last year the defendant sold to plaintiff a pony phaeton, not of his own manufacture, but which he warranted for a year, for the sum of $263. The vehicle was delivered at a stable near by, there hitched up, and plaintiff's servant undertook to drive it down to one of the boats, but had only proceeded a few blocks when the front axletree broke off close to the wheel. Plaintiff then returned it, offering to take $200 of the price paid; but the defendant said that it was an accident that might occur to the best carriage, and that he would make it as good as new. To this plaintiff consented; the phaeton was repaired, taken to the same stable, where it was received by a relative of the plaintiff, who immediately had the horse put to it and started out, but, as the vehicle crossed the curbstone into the street, the same axle gave way on the other side. The plaintiff then again returned it, saying he was convinced it was imperfect, and demanded back the whole sum which he had paid for it, refusing to accept $200, which the defendant offered him. The parties then went round to the repair shop, where the axle was taken out, and, on the blacksmith striking it across the anvil, it broke each time, and, according to plaintiff's evidence, was condemned both by the defendant and his blacksmith. This, however, defendant denies. A lengthy correspondence then ensued, in which various promises to settle were made. Plaintiff put it into his lawyer's hands, again withdrew to settle, and finally the suit was brought.

The evidence of the defendant was directed principally to the point of there being no flaw in the axle, that the breaks were clear, and that the test at the blacksmith's shop was not a fair one. He further testified that he received the carriage the second time only for the purposes of repair, for which he charges $35, and that on plaintiff's refusing to receive it he sold it for his account for $175, which sum, less commissions, expenses and repairs, he offers to pay plaintiff.

The Court simply charged the jury that if they were satisfied of the warranty, the defective construction and the return and acceptance, they must find for plaintiff.

Verdict in favor of plaintiff for $263, with interest. For plaintiff, S. B. Higenbotam; for defendant, A. B. Millard.

MARINE COURT—PART 2.

Decisions.

By Judge Curtis.

Jackson vs. Webb.—Judgment for plaintiff for $508 59 and costs, and $25 allowance.

Llara vs. House.—Judgment for plaintiff for $209 49 and costs, and $25 allowance.

Faught vs. Central Park, East River Railroad Company.—Complaint dismissed, with costs.

Obom vs. Hough.—Judgment for plaintiff for $51 75 and costs, and $25 allowance.

Lehman vs. Rothschild.—Judgment for plaintiff for $115 and costs, and $25 allowance.

COURT OF GENERAL SESSIONS.

A Homicide Case of Three Years Standing—Prompt Acquittal of the Accused.

Before Recorder Hackett.

At the opening of the Court yesterday Assistant District Attorney Fellows called the case of Robert W. Hopson, charged with shooting Henry C. Lyon, at a liquor saloon in South street, on the 9th of September, 1868. The defendant was genteelly dressed and occupied a seat beside his counsel, Mr. William F. Howe. Although the occurrence which resulted in the death of Lyon created considerable excitement at the time the intervening period between it and the trial was so long that there was no delay in getting a jury. Mr. Howe waived every tecnicality, believing that he had a good defence upon the merits, and the speedy termination of the case in favor of his client proved the correctness of his belief. After a brief opening Mr. Fellows called John Galvin, who, at the time of the transaction, was barkeeper in the saloon of Henry C. Lyon, 91 South street. He testified that there were a number of men in the saloon on this night, and Mr. Lyon was about bidding them good night, to go home, when he (the witness) observed Hopson and Lyon talking at the bar; a man said to him, "John they are growling again, can't you stop it," meaning Lyon and Hopson; the witness looked and saw Hopson step back and put his hand behind his back as if to draw a pistol out of his pocket, at the same time using very bad language to Lyon; the witness (Galvin) then took hold of him by the left hand, and heard a sound, which must have been the striking of Hopson with an umbrella by Lyon, which he did not see, but of which he subsequently heard; the witness was looking down for the pistol, and as he did he saw the flash; Officer Goodwin came in and he told him to take the prisoner in charge, that he had shot Lyon; a carriage could not be had, but a stage was chartered and the wounded man was taken to the City Hospital, where he died that night.

Robert F. Pawson, another barkeeper, gave a similar account of the fray and testified that Lyon struck the defendant two or three times on the head with an umbrella and that they used bad language to each other. After the firing of the pistol Lyon said, "My God! I am shot; he shot me;" he did not stagger or fall.

Officer Goodwin testified as to the arrest, and said he believed when the accused was brought to the station house he said he shot Lyon in self-defence.

George W. Isaacs said that Hopson and his wife used to visit Lyon and his family, and that between seven months and a year and a half preceding this occurrence Hopson threatened to shoot Lyon, and that he (Isaacs) took the pistol from him.

Mr. Howe consented that the deposition of the physician might be read, which established the fact that the deceased died from a pistol shot wound, and admitted that the shot was fired by Hopson.

THE CASE FOR THE DEFENCE.

The counsel made an effective opening to the jury, stating that he would show that the accused would have been fully justified in using the pistol, for the deceased was not only a dangerous character, but provoked the defendant by applying to his wife and relations the most opprobrious epithets that could be used towards any female. Mr. Howe dwelt upon the sacredness of the domestic relations, and expressed the belief that the jury would justify his client by pronouncing a verdict of not guilty without leaving their seats. The first witness called was Timothy Monahan, who was in the saloon at the time of the occurrence, and said he observed Lyon and Hopson engaged in low conversation; he heard Hopson tell Lyon he did not think it was so, whatever it was he was speaking to him about; Lyon told Hopson he lied; that his wife came in there to his barkeeper and got a bottle of gin at $2 50, and did not pay for it; Hopson took a note out of his pocket; Lyon had an umbrella in his hand, and struck Hopson on the head with it; Galvin, a barkeeper, came from behind the bar and took hold of Hopson, and then I heard a shot, but did not see the prisoner point the pistol.

Frederick Forter's evidence was to the same effect. He saw Lyon strike Hopson upon the head with an umbrella two or three times.

Robert W. Hopson testified in his own behalf that he had been in the employ of James McCreery & Co., Broadway, for the last six months; that on the evening of the occurrence he went to 91 South street to meet Mr. Weeks by appointment, and while there Lyon came in and shut the front door of the saloon, when he (Lyon) stated that his (Hopson's) wife got a bottle of gin; he, knowing the desperate character of Lyons pulled out a bill to pay for it, although he knew she did not get it; Lyon then made an infamous statement against Hopson's wife and mother, affecting their chastity, in language which cannot be printed; Hopson told him he lied, whereupon Lyon took up a large and heavy umbrella and hit him several blows, he (Hopson) retreating towards the door, whereupon Galvin came from behind the bar and pinioned his arms, at which time the accused pulled out his pistol in order to frighten him, and it accidentally went off. A week before the occurrence the defendant procured the pistol from a friend for self-protection, as he resided in Rockaway and was compelled to return home at night.

William Moser, Joseph A. Miller, George C. Schofield, B. G. Bean and Robert Warnock, in whose employ the accused had been for fifteen years, testified to his previous character for peace and quietness.

Mr. Fellows and Mr. Howe agreed to submit the case to the jury under His Honor's charge, which was brief and clear. The jury rendered a verdict of not guilty without leaving their seats.

LARCENY FROM THE PERSON.

Thomas Davin, a daring looking young fellow, was put on trial for robbery. Martin Kelly, an old man, stated that on the 10th of January, while returning from Central Park, about nine o'clock, he was met in Twenty-fifth street by a crowd of young men. The prisoner called him John and shook hands with him, and put his hand in his (the complainant's) pantaloons pocket, but did not take anything nor did he use any violence to him. While Davin was wrangling with him one of the party took his silver watch, worth $20. The jury convicted the prisoner of pettit larceny from the person, and the Recorder sent him to the State Prison for five years.

THEFT OF SURGICAL INSTRUMENTS.

George Gerbach pleaded guilty to grand larceny, the indictment charging him with stealing, on the 31st of December, 1871, $500 worth of surgical instruments from Albert L. Bernstein. He was sent to the State Prison for four years.

COURT CALENDARS—THIS DAY.

UNITED STATES DISTRICT COURT—IN ADMIRALTY—Held by Judge Blatchford.—Nos. 179, 164, 165, 167, 168, 169, 182, 172.

SUPREME COURT—CIRCUIT—Part 1—Held by Judge Barrett. Court opens at half-past ten.—Nos. 617, 719½ 833, 951, 1015, 1079, 141½, 1299, 1345, 1349½, 1353, 1357, 1359, 1363, 1367, 1369, 1375, 1377, 1379, 1381. Part 2—Held by Judge Brady.—Court opens at eleven A. M.—Nos. 642, 646, 794, 432½, 66½, 36½, 34, 360½, 364, 594½, 450, 562, 452, 454, 456, 464, 466, 468, 470, 472, 378.

SUPREME COURT—SPECIAL TERM—Held by Judge Barnard—Court opens at eleven A. M.—Nos. 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77, 80, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, 100.

SUPREME COURT—CHAMBERS—Held by Judge Cardozo—Court opens at eleven A. M. and calendar called at twelve M.—Nos. 23, 36, 41, 44, 46, 53, 56, 58, 59, 60, 61, 62, 67, 73, 75, 76, 77, 78, 79, 82, 87, 88, 123, 125, 127, 129, 130, 131. Call 151.

SUPERIOR COURT—TRIAL TERM—Part 1—Held by Judge Barbour—Court opens at eleven A. M.—Nos. 89, 1453, 1509, 1547, 1541, 1473, 1165, 1397, 1409, 1549, 1551, 1359, 1565, 1567, 1475.

COURT OF COMMON PLEAS—TRIAL TERM—Part 1—Held by Judge J. F. Daly—Court opens at eleven A.M.—Nos. 1076, 506, 845, 906, 980, 1065½, 1303, 1249, 893, 1829, 473, 71, 652, 1038. Part 2—Held by Judge Van Brunt—Court opens at eleven A. M.—Nos. 1251, 1231, 1336, 1337, 1339, 1341, 1344, 1347, 1348, 1350, 1352, 1353, 1354, 1355.

MARINE COURT—TRIAL TERM—Part 1—Held by Judge Gross—Court opens and calendar called at ten A. M.—Nos. 8099, 7543, 8096, 7541, 8040, 8079, 8180, 8092, 8103, 8146, 8179, 8180, 8181, 8203, 8209. Part 2—Held by Judge Curtis—Court opens and calendar called at ten A. M.—Nos. 7838, 8873, 7988, 8117, 7177, 7391, 8152, 7646, 7385, 7365, 8011, 8007, 8183, 8186, 8190, 8191, 8192, 8193, 8194, 8195. Part 3—Held by Judge Shea—Court opens and calendar called at ten A. M.—Nos. 9019, 9038, 8627, 8729, 9007, 9033, 9045, 9047.

BROOKLYN COURTS.

UNITED STATES CIRCUIT COURT.

A Question of Practice.

Before Judge Benedict.

Daniel W. Carrington vs. The Florida Railroad Company and Albert A. Drake.—This action, which has heretofore been reported, was commenced in the New York Supreme Court, but was subsequently removed to the United States Court under the act of Congress of July 27, 1866. A motion was made to have an injunction, which had been issued by the State Court, dissolved, and yesterday Judge Benedict rendered the following decision in the matter:—

"I entertain no doubt of the power of this Court in a cause duly removed from a State Court to dissolve an injunction granted in this cause while it was in a State Court; but I am of the opinion that where it is desired to make a motion like the present, which is in effect an application for a reargument of the motion made before the State Court, leave to make such application should first be applied for and obtained. The motion to dissolve the injunction is, therefore, denied on the ground that no leave to make the same had been previously obtained."

UNITED STATES DISTRICT COURT.

The March Term.

Before Judge Benedict.

The March Term commenced yesterday. The admiralty calendar for this month was called and cases set down for trial. The Marshal made returns of process in some cases, after which the Court adjourned.

UNITED STATES COMMISSIONERS' COURT.

A Cigar Dealer in Trouble.

Before Commissioner Winslow.

Michael Farrell was charged before the Commissioner yesterday morning with having offered to sell at his place, 445 Flatbush avenue, cigars which had been improperly boxed and stamped. Farrell was held to bail in the sum of $500 to appear on the 11th instant, when the hearing of his case will take place.

SUPREME COURT—CIRCUIT.

Contested Collectorships.

Before Judge Gilbert.

The People ex rel. Peter L. Williamson vs. James H. McKinney.—This action was brought to oust McKinney from the office of Tax Collector of the town of Flatbush. Williamson claimed to have been elected to the office at the charter election on the 4th of April, 1871, and charged that the defendant usurped the office on the 4th of November, 1871, and has held it since unlawfully. At a town meeting held in April, 1870, McKinney was elected for a term of one year, under a provision of the revised statutes, and during the same month an act was passed by the Legislature extending the term of tax collectors in the several towns three years. Defendant denied that he usurped the office, and that plaintiff never qualified. McKinney contended that under the statute he is still Collector, and Judge Gilbert directed a verdict in his favor.

In the case of Peter C. Breebe vs. George W. Palmer, involving the collectorship of New Lots, a decision was rendered in favor of defendant. The case was similar to the other one.

CITY COURT—TRIAL TERM—PART I.

The Westfield Disaster—Third Trial of the Suit of Widow Madden.

Before Judge Neilson.

Mrs. Jane Madden, the widow of Deputy Sheriff John Madden, is making another attempt to recover $5,000 damages from the Staten Island Railroad Company for the death of her husband. Yesterday the third trial of her action against the company was commenced in the City Court. The readers of the HERALD will remember that on the two former trials the juries disagreed and were discharged. Since then Mrs. Margaret Landers has succeeded in getting a verdict of $5,000 against the company for the loss of her husband, who was one of the victims of the terrible explosion.

It being anticipated that great difficulty would be experienced in securing a jury a special panel of 150 jurors were summoned for yesterday, from whom the following named gentlemen were selected as the jury to try the cause:—John A. Van Wynen, builder, 98 Second street; Delwin B. Carr, merchant, 127 Dean street; J. W. Clemons, dry goods, 438 Henry street; Lorenzo Bond, stationer, 86 Oxford street; George Layden, 10 Pineapple street; Frederick Clement, Jr., grocer, 38 Elliott street; Eugene Newton, agent, 140 Lafayette street; James Walker, real estate, 229 Warren street; John C. Winters, fish, 129 Hewes street; Charles E. Spencer, broker, 24 Clinton street; Ferdinand T. L. Boyle, artist, 757 Degraw street; Edward Sanxay, oil, 226 Degraw street.

The testimony will be the same as at the two previous trials. Messrs. Morris and Pearsall have charge of Mrs. Madden's case, while Messrs. Beach and Dickerson appear for the company. The trial will last several days.

CITY COURT—TRIAL TERM—PART 2.

Sheriff Walter's Visit to Monroe Street—The Result of Running a Bill at Stewart's—Mrs. Webster's Furs.

Before Judge McCue.

Last November Mrs. Abigail Webster, of No. 4 Monroe street, procured $500 worth of goods, including furs, &c., at A. T. Stewart's and had them charged to her husband, Hugh Webster. Mr. Webster was engaged in the grocery business corner of Fulton avenue and Hall street, but bursted up last fall and closed his store.

The bill incurred by Mrs. Webster was not paid and suit was brought against her husband. Judgment having been obtained Sheriff Walter levied upon the furniture in the house on Monroe street and sold it. It appeared, however, that this furniture belonged to Mrs. Webster and not to her husband. Yesterday she brought suit against the Sheriff to recover $1,650, the value of the property, and $200 damages. Mrs. Webster, a lady about fifty years of age, appeared yesterday, attired in velvet and furs, and swore that the furniture was purchased with her own money. Her testimony was corroborated, and the jury rendered a verdict in her favor of $1,254.

BROOKLYN COURT CALENDAR.

CITY COURT.—Nos. 4, 31, 35, 47, 51, 52, 54, 55, 56, 58, 69, 73, 74, 89, 94, 96, 97, 98, 99, 100, 101, 102, 105, 106, 108, 109, 110, 111, 112, 114, 115.

THE PERRY HOMICIDE.

Flight of Carroll—Post-Mortem Examination.

Timothy A. Carroll, the blacksmith, who stands charged with striking Thomas Perry, of 121st street and Fourth avenue, on the head with a hammer and thus hastening death, it seems has fled beyond the reach of the police. The Captain of the Twelfth precinct, who has the warrant, is in search of the accused, and entertains hopes of securing him. Dr. Joseph Cushman yesterday made a post-mortem examination on the body of deceased and found that he had a slight fracture of the skull. The internal organs, however, were much diseased, and deceased has long been in a feeble condition. The injuries Perry received doubtless accelerated death.

SUICIDE BY JUMPING FROM A WINDOW.

Owen Hamilton, a carman, fifty-four years of age, died at 232 West Sixteenth street at a late hour on Tuesday last. On Saturday last deceased, who had been partially deranged for some time past, leaped from a third story window to an awning below and received injuries which caused his death. Coroner Schirmer was notified.

RAID ON PANEL HOUSES.

Down in the Dens of the Fourteenth Ward.

HOW THE GAME IS WORKED.

MURDER MADE EASY.

It has been well known to the police authorities for a long time past that the Fourteenth ward was the favorite hunting ground of that particular kind of rogue known as the panel thief. One after another captains of police have been put in charge of the district, with a view to breaking up the system, and their success has been more or less varied. For a time the most notorious houses would disappear, and then, when the excitement of chasing the thieves had somewhat calmed, they would start again with renewed vitality and energy. Captain Mount was recently transferred from the Seventeenth precinct to the Fourteenth for the purpose of breaking up the

DIFFERENT DENS OF INFAMY

that abounded in the latter district, and he had partially succeeded in putting an end to the most notorious of them when he was removed to make way for Captain Clinchy, of the Broadway squad. Captain Mount at first directed his attention to the sneak thieves and burglars who lounged about the ward, leaving the panel houses to follow in the regular order. He was transferred, however, before the work was begun. On taking command of the precinct the present incumbent applied himself to the labor so well taken in hand by his predecessor, and commenced the task of cleaning the ward, just where Captain Mount left off, with the panel houses. That this is no easy duty may be readily seen by the number of arrests of rogues of all descriptions that have lately taken place in this and neighboring districts. On Tuesday night Captain Clinchy, accompanied by Detective Brennan, started out to make a tour of the ward and find the exact locations of the panel houses. When they got into Elm street the Captain and the detective found three houses in full blast. In the first one visited a woman and two men were discovered on the premises, who were arrested. Three rooms in the house were

SPLENDIDLY FURNISHED

and fitted up with all the necessary appliances for successfully carrying on that species of robbery known as the panel game. In the room on the ground floor of this house the panel was in the floor and was a sort of trap door covered with carpet the same as the rest of the apartment, and opening up into the room. This trap door was at the head of the bed, and could only be seen by a person standing at the entrance into the room. The thief who "worked" through this trap came up from the cellar underneath by means of a ladder, and when he had rifled the pockets of the victim he disappeared by the same way and then left the house with the booty, if there was any, by the front basement. The house next this was also examined by the police and found to be of the same character as the one they had just left. The thieves, however, had escaped in time to avoid being arrested. They had seen the captain of the police go into the house next door and, of course, that was sufficient; they fully understood the game was up. In the second establishment Captain Clinchy found

A SLIDING PANEL IN THE FOLDING DOORS

that worked upon wheels, and was large enough to admit about half a man's body. Besides this sliding panel there were also two smaller ones that reverted each upon a button, and which were used as points of observation by the thieves in the back room. In the second room on the top floor the means of getting possession of whatever may be in the pockets of the individual who was inveigled into it, was what is known as the bolt trick. This is a very ingenious description of bolt and staple, that seem to be made on purpose for the work they are used to assist in. The staple has all the appearance of being fastened on the frame work of the door, when the door is closed, but in reality it is attached to the door itself, and when the bolt is pushed into it, there is, to all intents and purposes, an air of perfect security, but in reality there is no security whatever. Captain Clinchy and Detective Brennan found a large number of these bolts and other devices of a similar nature upon the premises, and they took charge of them and had them removed to the station house. The Captain sent for assistance and then broke down the panels and all the contrivances for robbery in the place, so that the usual business could not be resumed. Being so successful in that one street Captain Clinchy turned his attention to Crosby street, thinking he would no doubt meet with a number of houses in

THE FULL TIDE OF TRAFFIC.

But the thieves had warned all the houses in the ward, and for the time being the police were compelled to give up the chase. Yesterday afternoon, however, the Captain and the detective again sallied forth in quest of panel people. Captain Clinchy sent his coadjutor in plain clothes before him to watch the houses and see if anything was going on. They had not been more than half an hour waiting for "something to turn up" when the detective gave a signal to his superior officer that a woman was endeavoring to inveigle a gentleman into 48 Crosby street. The police hurried to the spot and got there just in time to prevent the gentleman from

GOING INTO THE DEN.

They arrested the woman, took her to the station house, where she gave her name as Eliza Walters, and then locked the house up. Captain Clinchy went to Police Headquarters to inform Superintendent Kelso of what he had done, and the Superintendent desired him to go back to the place and break up the panels, as had been done in the other houses. The police Captain was accompanied by a reporter of the HERALD on his second visit to the place, and detective Brennan, who was left behind to look after the house, opened the door to them. Like almost all the other houses in the street, No. 48 is a brick construction, with a high stoop and a in a very dilapidated condition on the outside. Within, however, there is a general air of comfort and some pretensions to luxury. The front room on the first floor was furnished with a bed, a dressing table and washstand, two lounges, a chest of drawers and a small centre table. Upon a high mantel over the fireplace, where a large fire burned brightly, was a handsome clock, two immense glaring glass vases and an oil lamp. In a recess beside the lower window was a chest of drawers, upon which were carefully disposed a number of statuettes. This room was divided from the one in the rear by folding doors, and the head of the bed, which was unusually elevated, was turned in this direction. The corner room was the very reverse of the front one. Dirt and disorder were its most prominent features, and it looked like, and undoubted was, the workshop of the "gang." A rusty, filthy stove stood in the centre, and all around, strewed in every direction, were cooking utensils.

A RAGGED PIECE OF CARPET

covered the floor near the door, and upon it were two pairs of ragged slippers, that Captain Clinchy eyed suspiciously and pointed out as part of the thieves' stock in trade. The front apartment had been so carefully papered and showed so little of anything to create suspicion that the work of finding the panel was for some time a difficult task. The police went all around the place, sounding the walls, and were about giving up the case as hopeless when Captain Clinchy discovered a place that sounded as if it were hollow. They then went into the inner room, tore open one side of the folding doors and at once revealed the much sought for panel. This was a door that opened inwards on hinges, carefully greased, and which was cut in a partition that ran across the space left by the frame work of the folding doors. This doorway or panel was large enough to admit a man easily to the front room, and could be opened by the thieves in the rear without the slightest noise. When a victim was enticed into this place, and was, as he thought, carefully shut in, the robbers began their work. The first move was to put on the slippers as soon as the woman gave the signal, then open the half of the folding doors—the police were obliged to break them open—by pulling a wire attached to a bolt on the other side, and which, passing through the framework, just appeared outside the wall sufficiently to take hold of. As soon as this door was swung back

THE PANEL WAS OPENED,

the thief stole into the room, rifled the pockets of the unsuspecting visitor and then escaped the way he came. If, however, the victim should by any chance see what was going on the thieves were fully prepared. In case he made a noise and was likely to bring in the police he would be instantly goffed, dragged into the back room, flung through a trap into the sub-cellar, and if his neck was not broken by the fall he would be sufficiently stunned to allow the thieves time to finish him at leisure. Of course nothing of this kind may have ever occurred, yet the means for doing something of the sort are there and ready for use at any moment. There is, beside, an easy mode of escape in the rear, for the fences are low, and the people living in the adjoining houses are not exactly of the class that would be desirous of stopping the flight of a thief. On searching this back room where the trap door is Captain Clinchy found a box of cartridges, a quantity of bolts like those discovered in the other places, and screws and hinges, suitable for panel "work," stowed away in a kind of cupboard. On the second floor was another room,

FITTED UP EXACTLY

like the one beneath, and used for the same purpose. While the police were searching the place and destroying the panel fixtures a man, who gave his name as James Cookley, went in and was arrested. All the boardings and partitions were broken up, the house locked and the key taken to Police Headquarters. The police then went to 91 in the same street, but they found the *habitués* of that establishment had vanished. The doors were tried, but they were securely fastened, and the police were compelled to leave it until another time. The people arrested will be taken before Judge Dowling, at the Tombs, this morning, and arraigned as panel thieves.